

### Remarks

This amendment is filed responsive to the Office communication mailed December 29, 2004 holding noncompliant Applicant's previously filed amendment pursuant to 37 CFR 41.50(b) to reopen prosecution before the Examiner to consider a new ground of rejection entered by the Board of Patent Appeals and Interferences in its decision on Appeal No. 2004-2210 mailed Sept. 30, 2004. Claims 26-29 and 32 stand rejected under 35 U.S.C. 112, second paragraph, as indefinite. Reconsideration by the Examiner is requested in light of the above amendments and the remarks which follow including Applicant's Terminal Disclaimer provided herewith.

The previously filed amendment was considered noncompliant as lacking a complete listing of all the claims and a status identifier for claim 27. In addition, the communication suggested that a terminal disclaimer may be needed.

The above amendments are believed to be compliant and address each of the issues raised by the Board of Patent Appeals and Interferences in its rejection under 35 U.S.C. 112, second paragraph. Specifically, any uncertainty about the degree of filler content that results in a layer being "substantially free of particulate filler" is removed by deletion of the word "substantially". As amended, the layers "C" are free of filler. Support for the amendment may be found, for example, at page 40, line 5, of applicant's specification. Also, the reference to applicant's Examples 6 and 7 by the Board should be understood in the context that these examples demonstrate the ability to stretch microporous, i.e. filler containing, layers at greater draw ratios. As such, they are not intended to represent examples of the invention including monolithic layers. The second issue raised concerning the future reference suggested by the phrase "where upon" has been addressed by deletion of that phrase so that the claims now call for the microvoids to be present. As amended, applicant's claims 26-29 and 32 are believed to satisfy the requirements of 35 U.S.C. 112, second paragraph.

The Board has also raised a question about the filler content of the film layers of McCormack et al. USP 6,075,179 ("McCormack") Example 3 since the filler content of Techmer S110128E62 antiblock has not been specified. Applicant respectfully contends that one of skill will readily appreciate that antiblock compositions contain filler in order to perform the required function. See, for example, the Spartech Polycorn Products literature provided herewith. As noted, antiblocks act through a dispersion of inorganic solids that "rougher" the film surface. Particularly for the McCormack embodiments where the skin layers have adhesive properties, such an antiblock will be important to avoid film blocking. Thus, one skilled in the art would not be led by McCormack to filler free skin layers in the sense of the

present invention.

The Board's assertion of the functional equivalence of the McCormack films is also believed to be in error. The Board's reference to McCormack peel strength of 161 grams as evidence that the layers of the film are adhesive to each other is incorrect since the McCormack peel is measured between the nonwoven and the film, not the individual film layers. Again, it is pointed out that McCormack suggests adhesive skin layers, not an adhesive core. Importantly, the conclusion drawn by the Board that McCormack's 110 cm hydrohead establishes barrier to microorganisms is without basis. In this regard attention is drawn, for example, to co-assigned USP 6,238,767, columns 11 and 12, where a comparative film having a hydrohead of 130 mbar failed blood testing and would, therefore, fail the more stringent phage test. Microorganism barrier is much more difficult to achieve than hydrohead and is measured by a very different test and standard. See the description of the ES22 test on page 52 of applicant's specification. It should also be appreciated that the filler-free monolithic skin layers of the present invention are important in achieving the barrier to microorganisms of applicant's claims.

In accordance with the Examiner's suggestion, a Terminal Disclaimer is provided herewith.

In summary, it is respectfully submitted that the above amendments, Terminal Disclaimer and remarks fully address and overcome the Board's rejection and clearly distinguish the present invention patentably over the McCormack reference. Accordingly, this application is believed to be in condition for allowance, and such favorable action is respectfully solicited.

Any necessary fees including any fee for the Terminal Disclaimer may be charged to Deposit Account 11-0875.

The undersigned may be reached at 770-587-8096.

Respectfully submitted,

Forte

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